

## STATE OF ILLINOIS

### ILLINOIS COMMERCE COMMISSION

Hydro Star, LLC; Nuon Global	:	
Solutions USA, B.V.; Utilities, Inc.,	:	
Each of the 24 Illinois Operating	:	
Subsidiaries of Utilities, Inc.	:	05-0522
	:	
Joint Application for Approval	:	
of Reorganization.	:	

### ORDER

**By the Commission:**

#### **I. PROCEDURAL HISTORY**

On August 17, 2005, Hydro Star, LLC ("HS"), Utilities, Inc. ("UI"), Nuon Global Solutions USA, B.V. ("NGS") and each of the 24 Illinois Operating Subsidiaries of Utilities, Inc. ("UI Operating Subsidiaries") (collectively, "Applicants") filed a verified Joint Application with the Illinois Commerce Commission ("Commission") for approval of a proposed transaction pursuant to Section 7-204 of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/7-204.

Pursuant to proper notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois on September 14, and November 30, 2005. The Applicants and the Staff of the Commission appeared through counsel. Steven M. Lubertozzi, Director of Regulatory Accounting for Utilities, Inc., presented direct and supplemental testimony in support of the Joint Application. Staff direct testimony was provided by: Thomas Griffin, Accountant in the Accounting Department of the Financial Analysis Division; William D. Marr, Water Engineer in the Water Department of the Financial Analysis Division; and Sheena Kight, Senior Financial Analyst in the Finance Department of the Financial Analysis Division. No Petitions to Intervene were filed and no other appearances entered. At the conclusion of the hearing on November 30, 2005, the record was marked "Heard and Taken".

#### **II. DESCRIPTION OF THE PROPOSED REORGANIZATION**

The Joint Application states that UI is a wholly-owned subsidiary of Nuon Global Solutions USA, Inc. ("NGSI"), which in turn is a wholly-owned subsidiary of NGS. As a result of discussions between HS and NGS concerning the possible acquisition of NGSI by HS ("the Transaction"), HS and NGS entered into a Stock Purchase Agreement ("Agreement") dated May 14, 2005. Pursuant to and in accordance with the terms of the

Agreement, every issued and outstanding share of NGSi stock will be acquired by HS. According to Applicants, as a result of the Transaction, the separate corporate existence of UI shall continue, UI shall remain a wholly-owned subsidiary of NGSi, and NGSi will be a wholly-owned subsidiary of HS. From and after the effective time of the Transaction, all rights, duties and obligations of UI existing before the Transaction will continue and UI will remain the owner of the UI Operating Subsidiaries. The Applicants assert that UI will continue to maintain its headquarters in Northbrook, Illinois and will retain its current management. With respect to the UI Operating Subsidiaries, the Applicants indicate that the Transaction occurs entirely “above the holding company level,” that is, none of the assets or securities of UI or of any UI Operating Subsidiary will be transferred or sold as a result of the Transaction. The Transaction will change only the ultimate owner of the stock of NGSi.

According to the Joint Application, because the proposed Transaction will occur entirely at the parent company level, it does not involve or require the sale, assignment or transfer of any property of the UI Operating Subsidiaries. Applicants state that the UI Operating Subsidiaries will continue to hold all the licenses and authorizations they held prior to the Transaction. Applicants affirm that none of the rates, terms or conditions for the provision of water and sewer public utility services applicable to the UI Operating Subsidiaries (which are on file with and approved by the Commission) will change as a result of the Transaction. Applicants further state that no operations, lines, plant, franchise or permits of the UI Operating Subsidiaries will be merged with the lines, plant, franchises or permits of any other company. Applicants state that there will be no cost savings from the proposed Transaction. Applicants also indicate that they will not seek to recover any costs of the Transaction through rates.

### **III. SECTION 7-204 OF THE ACT**

The Transaction described in the Joint Application and summarized in Section II of this Order constitutes a “reorganization” as defined under Section 7-204 of the Act and, therefore, Commission approval is required. Section 7-204(b) of the Act provides that the Commission shall not approve any reorganization if the Commission finds that the reorganization will adversely affect the utility’s ability to perform its duties under the Act. More specifically, Section 7-204(b) of the Act states that in reviewing any proposed reorganization, the Commission must find that:

- (1) the proposed reorganization will not diminish the utility’s ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
- (2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;
- (3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for rate-making purposes;

- (4) the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
- (5) the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;
- (6) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and
- (7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

Additionally, Section 7-204(c) of the Act states that the Commission shall not approve a reorganization without ruling on (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.

#### **IV. APPLICANTS' POSITION**

Applicants contend that the proposed Transaction will be in compliance with the requirements of Section 7-204(b) of the Act. Applicants state generally that nothing in the proposed Transaction will adversely affect the UI Operating Subsidiaries' ability to perform their duties under the Act.

With specific regard to Section 7-204(b)(1) of the Act, Applicants state that the Transaction will not diminish the ability of the UI Operating Subsidiaries to provide adequate, reliable, efficient, safe and least-cost public utility service to the customers in the respective UI Operating Subsidiaries' service territories. Mr. Lubertoizzi testifies that the Transaction will not affect the UI Operating Subsidiaries' day-to-day business operations or the provisioning of services to their customers.

With respect to Section 7-204(b)(2) of the Act, Applicants aver that the Transaction will not result in any unjustified subsidization of non-utility activities by the utility or its customers. Regarding Section 7-204(b)(3) of the Act, Applicants maintain that the proposed Transaction will not impact the ability of the UI Operating Subsidiaries to fairly and reasonably to allocate their costs and facilities between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities that the UI Operating Subsidiaries may properly include when setting rates for rate-making purposes in compliance with Section 7-204(b)(3) of the Act. Mr. Lubertoizzi testifies that the UI Operating Subsidiaries will remain subject to the cost allocation requirements of all Commission regulations, as they are today.

Concerning Section 7-204(b)(4) of the Act, Applicants assert that the Transaction

will not impair the UI Operating Subsidiaries' ability to raise necessary capital. The Transaction will be effected by a stock purchase at the parent company level. UI will continue to be responsible for raising capital and the Transaction will have no adverse impact on the ability of UI to either raise capital on reasonable terms or to maintain a reasonable capital structure.

With respect to Section 7-204(b)(5) of the Act, Applicants state that, following the completion of the proposed Transaction, the UI Operating Subsidiaries will continue to be subject to the jurisdiction of the Commission, and, therefore, would continue to be subject to all applicable laws, regulations, rules, decisions and policies governing regulated public utilities. Regarding Section 7-204(b)(6) of the Act, Mr. Lubertozi testifies that nothing in the proposed Transaction could result in any adverse effect on competition in the markets over which the Commission has jurisdiction. As for Section 7-204(b)(7) of the Act, Mr. Lubertozi avers that the Transaction will not result in any local rate increase.

Concerning Section 7-204(c) of the Act, Applicants project that the UI Operating Subsidiaries will not realize any cost savings through the Transaction. Any Transaction savings that do occur with respect to expenses of the UI Operating Subsidiaries will be passed on to rate-payers in later rate proceedings. Mr. Lubertozi testifies that Applicants will not seek to recover through rates any costs that they may incur in accomplishing the proposed Transaction.

## **V. COMMISSION STAFF'S POSITION**

Staff reviewed the Joint Application, Mr. Lubertozi's direct and supplemental testimony and responses to Staff Data Requests. Based upon that review, Staff concludes that the Transaction will satisfy the requirements of Section 7-204 of the Act.

With specific regard to Section 7-204(b)(1) of the Act, Mr. Marr testifies that the Transaction will not diminish the ability of the UI Operating Subsidiaries to provide adequate, reliable, efficient, safe and least-cost public utility service to the customers in the respective UI Operating Subsidiaries' service territories. With respect to Section 7-204(b)(5) of the Act, Mr. Marr testifies that, following the completion of the proposed Transaction, the UI Operating Subsidiaries will still be subject to all applicable laws, regulations, rules, decisions and policies governing regulated public utilities. Regarding Section 7-204(b)(6) of the Act, Mr. Marr testifies that nothing in the proposed Transaction could result in any significant adverse effect on competition in those markets over which the Commission has jurisdiction.

In summary, Mr. Marr recommends that the Commission find that the proposed Transaction meets the requirements of Sections 7-204(b)(1), (b)(5), and (b)(6) of the Act.

With respect to Section 7-204(b)(2) of the Act, Mr. Griffin testifies that the proposed Transaction will not result in any unjustified subsidization of non-utility activities by the utility or its customers. Regarding Section 7-204(b)(3) of the Act, Mr. Griffin testifies that the proposed Transaction will not impact the ability of the UI Operating Subsidiaries to fairly

and reasonably allocate their costs and facilities between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities that the UI Operating Subsidiaries may properly include for rate-making purposes. With respect to Section 7-204(b)(7) of the Act, Mr. Griffin testifies that the Transaction is not likely to result in any adverse rate impacts on the UI Operating Subsidiaries' retail customers.

Concerning Section 7-204(c) of the Act, Mr. Griffin testifies that it is reasonable that the UI Operating Subsidiaries will not realize any cost savings in connection with the Transaction because the Transaction is a stock purchase transaction and will not affect the operations of the UI Operating Subsidiaries. Mr. Griffin notes that, to the extent any future unexpected savings are realized, they should be passed on to rate-payers in later rate proceedings. Mr. Griffin also testifies that he agrees with Applicants' position that they will not seek to recover any costs that they may incur in accomplishing the proposed Transaction.

With respect to the Applicants' accounting treatment of Transaction costs, Mr. Griffin testifies that the UI Operating Subsidiaries appropriately will record all Transaction-related costs in Account 426, "Miscellaneous Non-Utility Expense." Mr. Griffin further testifies that the Joint Application complies with all of the requirements of Sections 7-204A(a)(1)-(6) of the Act.

In summary, Mr. Griffin recommends that the Commission find that Applicants are in compliance with Sections 7-204(b)(2), 7-204(b)(3), 7-204(b)(7) and 7-204A(a)(1)-(6) of the Act.

Staff witness Kight presents evidence regarding the financial implications of the proposed Transaction. Ms. Kight states that as the owner of the capital stock of UI Operating Subsidiaries and the conduit through which they will access capital markets, UI must maintain a level of financial strength sufficient to raise capital on reasonable terms. Her review of UI's funds from operations interest coverage, total debt to total capital, and funds from operations to total debt ratios for 2003 and 2004 indicates each is at or above the benchmarks set by Standard & Poor's ratings agency for a credit rating of BBB. Ms. Kight also testifies that the Transaction will not alter the UI Operating Subsidiaries' capital structure, and that the current capital structure of approximately 60% debt and 40% equity is reasonable. Thus, Ms. Kight concludes that the proposed Transaction will not significantly impair the UI Operating Subsidiaries' ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure, as required by Section 7-204(b)(4) of the Act.

With respect to Section 6-103 of the Act, Ms. Kight testifies that the balance sheet and capitalization of the UI Operating Subsidiaries will not change as a result of the proposed Transaction. In relation to Section 7-204A(a)(7) of the Act, Ms. Kight testifies that the UI Operating Subsidiaries forecasted capital requirements for the years 2006-2009, attached as Exhibit D to the Joint Application, satisfies the minimum requirement for such information.

In summary, Ms. Kight recommends that the Commission find that Applicants have satisfied the requirements of Sections 7-204(b)(4), 6-103 and 7-204A(a)(7) of the Act.

## **VI. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record, and being fully advised in the premises, is of opinion and finds that:

- (1) Each of the UI Operating Subsidiaries is an Illinois corporation engaged in the business of providing public utility water and/or sewer service to the public in Illinois and, as such, is a public utility as defined by the Act;
- (2) the Commission has jurisdiction over the UI Operating Subsidiaries and the subject matter of this proceeding;
- (3) the findings of fact and conclusions herein are fully supported by the record and are hereby adopted as findings of fact;
- (4) the Applicants have satisfied the information requirements of Section 7-204A(a) of the Act;
- (5) the proposed Transaction satisfies the provisions in Sections 7-204(b)(1)-(7) of the Act as follows:
  - (I) the proposed Transaction will not diminish the UI Operating Subsidiaries' ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
  - (II) the proposed Transaction will not result in the unjustified subsidization of non-utility activities by the UI Operating Subsidiaries or their customers;
  - (III) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the UI Operating Subsidiaries for rate-making purposes;
  - (IV) the proposed Transaction will not significantly impair the UI Operating Subsidiaries' ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
  - (V) the UI Operating Subsidiaries will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;

- (VI) the proposed Transaction is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and
  - (VII) the proposed Transaction is not likely to result in any adverse rate impacts on retail customers.
- (6) the terms of the Transaction are reasonable and HS should be authorized to acquire the outstanding shares of Utilities, Inc.'s parent, NGSi; as a result of the Transaction, the separate corporate existence of Utilities, Inc., shall continue, Utilities, Inc., shall remain a wholly-owned subsidiary of NGSi and NGSi will be a wholly-owned subsidiary of HS;
  - (7) Any cost savings that result from the Transaction should not increase the revenue requirement in any future UI Operating Subsidiary rate filing;
  - (8) Utilities, Inc., should be authorized to make accounting entries on its books to reflect the Transaction, and should be directed to record Transaction costs in Account 426, "Miscellaneous Non-Utility Expense";
  - (9) The UI Operating Subsidiaries should not be allowed, in this proceeding or any other proceeding, to recover any costs incurred in accomplishing the proposed Transaction;
  - (10) There are no anticipated cost savings from the proposed Transaction; therefore, no savings should be allocated;
  - (11) the Applicants' proposed Transaction should be approved and authorized.

IT IS THEREFORE ORDERED that consent and approval are granted to Applicants to carry out all actions reasonably necessary to effectuate the Transaction described in this Order, including the "Stock Purchase Agreement" between Hydro Star, LLC and Nuon Global Solutions USA, B.V.

IT IS FURTHER ORDERED that any cost savings that result from the Transaction shall not increase the revenue requirement in any future rate filing of any UI Operating Subsidiary.

IT IS FURTHER ORDERED that the rates, rules, regulations and conditions of service applicable to the service areas of the UI Operating Subsidiaries shall remain the same as those currently on file with the Commission, until such time as any changes thereto are approved by the Commission.

IT IS FURTHER ORDERED that Utilities, Inc., shall make the necessary accounting entries to reflect the Transaction, and that Transaction costs be recorded in Account 426, "Miscellaneous Non-Utility Expense."

IT IS FURTHER ORDERED that the UI Operating Subsidiaries shall not be allowed to recover, in this or any other proceeding, any costs incurred in accomplishing the Transaction.



IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Illinois Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission on this 25<sup>th</sup> day of January, 2006.

(SIGNED) CHARLES E. BOX

Chairman